THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D. APPA RAO

WRIT APPEAL Nos.340 of 2006, 773, 1648, 2223, 2303, 2307, 2316, 2352, 2435, 2476, 2482, 2519, 2529, 2587, 2593, 2595, 2598, 2613 of 2005, W.A (SR) Nos.15440, 27593, 33262, 33310, 33480 and 33992 of 2006, WRIT APPEAL Nos.6, 118, 181, 185, 229, 232, 234, 247, 311, 321, 349, 350, 351, 368, 370, 371, 375 and 376 of 2006

(Date: 10-04-2006)

WRIT APPEAL NO. 340 OF 2006:

Between:

The Depot Manager, A.P.S.R.T.C.,

Anantapur, Anantapur District and another.

….Appellants/Respondents..

And

K. Adireddy, S/o Narayana Reddy,

Hindu, r/o Gangadevipalli Village,

Tadepatri Mandal, Anantapur District.

... Respondent/Writ Petitioner.

and 41 cases

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COMMON JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

Heard Sri V.T.M. Prasad, the learned Standing Counsel appearing for the appellant-Corporation and Sri G. Ravi Mohan, and other learned counsel appearing for the respondents.

The short interesting question, which commonly arises for consideration in these batch of cases, is as to whether, on the facts and circumstances, any distinction can be drawn in between in the cases of two punishments of one withholding increments with and another without cumulative effect awarded ? and whether such cases would fall within the mischief of major penalty calling for a regular enquiry as contemplated by the Regulations framed by the appellant-Corporation herein ?

The facts, which are not in dispute, are that the respondents are the employees

working with the appellant-Corporation, who initiated the disciplinary enquiry on certain allegations and ultimately on issuance of show-cause notice, the punishment of withholding of two increments with cumulative effect was imposed.

It has been contended by the learned counsel for the respondents in the writ petitions filed by them challenging the punishment that the action of the appellant-Corporation would virtually amount to major penalty, which requires a regular enquiry and without which, no such punishment can be meted out to them, which was accepted by the learned single Judge. Hence, these appeals by the Management/Corporation.

The relevant provisions, since there is no dispute on facts, which require for considering the aforesaid questions, are Rule 8 (iv), Rule 8 (vii), Rules 12 and 16 of the Andhra Pradesh State Road Transport Corporation (Conduct of Meetings) Regulations, 1959 (for brevity 'the Regulations'). These Rules read as follows:

8. (1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:

(iv) withholding of increments

vii. reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;

Rule 12 Procedure for imposing penalties:

1. No order imposing any of the penalties specified in items (i) to (vi) of clause (1) of regulation 8 shall be passed except after –

b. the employee concerned is informed in writing of the proposal to take action against him and of the allegations on which action is proposed to be taken and is giving an opportunity to make any representation he may wish to make; and

a. such representation, if any, is taken into consideration by the authority imposing the penalty.

The record of proceeding in such cases shall include a copy of the intimation to the employee of the proposal to take action against him, a copy of the statement of allegations communicated to him, his representation, if any, the findings arrived at on the allegation with reasons therefor and the orders passed on the case by the authority competent to impose the penalty.

2. No order imposing on an employee any of the penalties specified in items (vii) (viii) and (ix) of clause (1) of regulation 8 shall be passed except after an enquiry is held as far as may be in the manner hereinafter provided.

3. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges and communicated to the employee charged together with statement of the allegations of a copy of the report on which each charge is based, and of any other circumstances which it is proposed to take into consideration in passing orders on the case.

4. The employee shall be required within such time as may be considered by the enquiring authority reasonably adequate in the circumstances of the case (ordinarily not less than seven clear days from the date he receives the charge-sheet) to put in a written statement of his defence.

5. The employee charged shall, if he so desires, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify.

Provided that the enquiring authority may, for reasons to be recorded in writing, refuse him such access if in its opinion—

a. Such records are not relevant for the purpose or it is against the public interest to allow access thereto;

or

b. Such records are of a secret or confidential nature, provided that the substance of such records is communicated to the delinquent employee.

6. If within the prescribed time or such further time as the enquiring Authority may allow no written statement in defence is filed and no request for being heard in person is received, the enquiring Authority may proceed to record his findings without holding any further enquiry.

7. If the employee charged desires to be heard in person, or if the Enquiring Authority considers it necessary to hear him in person, he shall be so heard by the Enquiry Authority. If he desires that an oral Enquiry be held or if the Enquiring Authority or the authority competent to impose the penalty considers it necessary an oral Enquiry may be held by the Enquiring Authority into such charges

as are not admitted.

8. The Enquiring Authority shall in the course of the Enquiry consider such documentary evidence and take such oral evidence as may be relevant or material to the charges. The employee concerned shall be entitled to cross-examine any witness examined by the enquiring authority. If the enquiring Authority declines to examine any witness, it shall record its reasons in writing.

9. The statements made by the employee and the witnesses, if any, shall be recorded either in English or in the language in which they are made, according as the Enquiring Authority may decide. The Enquiring Authority may put such questions as it may deem necessary to the employee or to the witnesses, to elicit information on any points which, in its opinion, require clarification. The Statement so recorded shall be read over to the deponent and; if necessary, explained to him in the language in which it was given. It shall be corrected, if necessary, or the Enquiring Authority may make a memorandum of the objection, if any, raised by the deponent and add such remarks as it may consider necessary. The statements shall then be signed by the deponent, by the employee charged, if he himself is not the deponent, and by the Enquiring Authority. The employee charged may, if he so desires, be allowed to take copies of the statements so recorded.

10. At the conclusion of the Enquiry, the Enquiring Authority shall prepare a report of the enquiry, record its findings on each of the charges with reasons therefor, and forward the proceedings of the enquiry to the authority competent to impose the penalty, unless the Enquiring Authority is itself competent to do so. The proceedings of the enquiry shall contain the charges framed against the employee along with the grounds of the charge, the written statements, if any filed in defence, the oral evidence taken during the enquiry, the documentary evidence considered in the course of the enquiry, the orders if any, made by the Enquiring Authority in regard to the enquiry, and a report setting out the findings on each charge and the reasons therefore.

11. If in the opinion of the Enquiring Authority the proceedings of the enquiry establish charge different from those originally framed, it may record findings on such charges, provided that findings on such charges shall not be recorded unless the employee has admitted the facts constituting them or has had an opportunity of defending himself, against them.

12. The authority competent to impose the penalty shall, if it is not the Enquiring Authority, consider the proceedings of the enquiry and record its findings on each charge.

13. The authority competent to impose the penalty shall then determine what penalty, if any, should be imposed on the employee, and pass appropriate orders on the case. If the penalty proposed to be imposed is one of the penalties specified in items (vii) (viii) or (ix) of

Regulation 8, he should be given an opportunity to show cause why the said penalty should not be imposed.

14. If the authority competent to impose the penalty having regard to its findings is of the opinion that any of the penalties specified in items (i) to (vi) of clause (1) of Regulations 8 would be adequate, it shall pass appropriate orders on the case.

Rule 16 **Withholding of increments:**

In ordering the withholding of an increment, the authority passing the order shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments.

From the above, there exists a distinction between nature of punishments under Rule 8 (iv) and Rule 8 (vii) of the Regulations. Of the aforesaid Rules, under Rule 8 (iv), the punishment contemplated is withholding of increments and under Rule 8 (vii), punishment contemplated is reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same class of service or in another class, or to a lower stage in a time-scale. According to the learned counsel for the employees/the respondents, any such punishment of withholding of increments with cumulative effect is a major penalty, which can be imposed only after conducting regular enquiry. In regard to withholding of increments, the above Rules by reading together as aforesaid amply clear that whenever such punishment is imposed, necessarily the order shall have the effect of postponing the future increments. There is no serious dispute on either side, if it is to be taken as minor penalty, no enquiry need be conducted by the management. In this connection, the learned counsel for the respondents sought to place reliance on a decision reported in **Kulwant Singh Gill Vs. State of Punjab**wherein the Supreme Court, while considering the penalty of stoppage of two increments with cumulative effect under Punjab Civil Services

(Punishment and Appeal) Rules 1970, and quoting the follow Rule, which reads as:

"**Major Penalties**: Rule 5 (v): Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(v) reduction to a lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further direction regarding conditions of restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration that grade, post or service;

vii) compulsory retirement;

viii) removal from service which shall not be a disqualification for future employment under the Government;

ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government." It was held that:

Withholding of increments of pay *simpliciter* undoubtedly is a minor penalty within the meaning of Rule (iv). But sub-rule (v) postulates reduction to a lower stage in the time-scale of pay for a specified period with further directions as to whether or not the Government employee shall earn increments of pay during the period of such reductions and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay. It is an independent head of penalty and it could be imposed as punishment in an appropriate case. It is one of the major penalties. The impugned order of stoppage of two increments with cumulative effect whether would fall within the meaning of Rule 5(v) ? If it so falls Rules 8 and 9 of the Rules require conducting of regular enquiry. The contention of Shri Nayar, learned counsel for the State is that withholding two increments with cumulative effect is only a minor penalty as it does not amount to reduction to a lower stage in the time-scale of pay. We find it extremely difficult to countenance the contention. Withholding of increments of pay simpliciter without any hedge over it certainly comes within the meaning of Rule 5(iv) of the Rules. But when penalty was imposed withholding two increments i.e. for two years with cumulative effect, it would indisputably means that the two increments earned by the employee was cut off as a measure of penalty

for ever in his upward march of earning higher scale of pay. In other words the clock is put back to a lower stage in the time-scale of pay and on expiry of two years the clock starts working from that stage afresh. The insidious effect of the impugned order by necessary implication, is that the appellant employee is reduced in his time-scale by two places and it is imperpetuity during the rest of the tenure of his service with a direction that two years' increments would not be counted in his time-scale of pay as a measure of penalty. The words are the skin to the language which if pealed off its true colour or its resultant effects would become apparent. When we broach the problem from this perspective the effect is an envisaged under Rule 5(v) of the Rules. It is undoubted that the Division Bench in Sarwan Singh v. State of Punjab & Ors., P.C. Jain, A.C.J. speaking for the Division Bench, while considering similar question, in paragraph 8 held that the stoppage of increments with cumulative effect, by no stretch of imagination falls within clause (v) of Rule 5 or in rule 4.12 of Punjab Civil Services Rules. It was further held that under clause (v) of Rule 5 there has to be a reduction to a lower stage in the time-scale of pay by the competent authority as a measure of penalty and the period for which such a reduction is to be effective has to be stated and on restoration it has further to be specified whether the reduction shall operate to postpone the future increments of his pay. Accordingly it was held that clause (iv) of Rule 5 is applicable to the facts of that case. With respect we are unable to agree with the High Court. If the literal interpretation is adopted the learned Judges may be right to arrive at that conclusion. But if the effect is kept at the back of the mind, it would always be so, the result will be the conclusion as we have arrived at. If the reasoning of the High Court is given acceptance, it would empower the disciplinary authority to impose, under the garb of stoppage of increments, of earning future increments in the time scale of pay even permanently with expressly stating so. This preposterous consequences cannot be permitted to be permeated. Rule 5(iv) does not empower the disciplinary authority to impose penalty of withholding increments of pay with cumulative effect except after holding inquiry and following the prescribed procedure. Then the order would be without jurisdiction or authority of law, and it would be *per se* void. Considering from this angle we have no hesitation to hold that the impugned order would come within the meaning of Rule 5(v) of the Rules; it is a major penalty and imposition of the impugned penalty without enquiry is *per se* illegal."

The learned Standing Counsel appearing for the appellant-Corporation sought to draw a distinction in regard to Rules contained in the aforesaid decision and those applicable to the present case on hand and further sought a distinction to the effect

that the situation would differ from case to case depending on the facts of each case and therefore, necessarily the aforesaid decision cannot be applicable to the facts of the case on hand. Further in support, the learned Standing Counsel for the appellant-Corporation placed reliance on a decision reported in **M. Devaki Vs. State of Kerala** wherein while considering the Kerala Civil Services (Classification Control and Appeal) Rules, 1960 and after referring the aforesaid decision of the Supreme Court, the learned single Judge of the Kerala High Court held that in fact the punishment of withholding of one increment with cumulative effect would only fall within the minor penalty. Even though in regard to such contention, we do not find any serious distinction in regard to the distinction as sought to be contended on behalf of the appellant in between these and those Rules. It is the effect of punishment, which rings the bell and not its nature. In view of the principles as laid down by the Apex Court, the above decision of the Kerala High Court is not a good law. Having regard to the detailed reasons and the principles as laid down by the Apex Court, there is no scope to draw any distinction or to draw ourselves nearer to the submissions made by the appellant.

The learned Standing Counsel appearing for the appellant-Corporation contended that the learned single Judge ought not to have allowed the delayed Writ Petition and when the respondents did not avail the remedy of appeal available under Rules 22 and 29 of the Regulations.

In regard to the delay, the appellant cannot take recourse to any action which is contrary to law and affects the substantive rights of the employees. And, when it is found that the impugned action is wholly unsustainable, there cannot be any bar for

exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India irrespective of the remedies as available under the Regulations. In fact, it is the consistent erroneous stand all along of the appellant-Corporation that in such a situation, the penalty imposed would only fall within the minor penalty; hence no regular enquiry need be necessary. We do not find any legal justification in support of the stand taken by the appellant-Corporation. Having regard to the aforesaid reasons and in view of the principles as laid down by the Apex Court, we hold that under Rule 8 (iv) of the Regulations framed by the Corporation itself in withholding of increments with cumulative effect would squarely be a major penalty and it would attract the regular procedure under the Regulations for an enquiry after following due notice and opportunity. Hence, we do not find any merits in these appeals.

The appeals are accordingly dismissed. No costs.

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B. PRAKASH RAO, J

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D. APPA RAO, J

10th April 2006.

Chvn.

Note: L.R. copy to be marked.

B/o

Chvn.